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ABSTRACT

There have been many recent developments concerning academic freedom and responsibility. The latter is especially important because, with the rediscovery of the 1871 Civil Rights Act, individuals and institutions can be sued for money. As regards teacher preparation programs in particular, there are four critical times for decisions which could result in court action against those who make the decision: (a) when the candidate applies for admission to the teacher education program, (b) when the student applies for his student teaching assignment, (c) when a decision is made about whether or not the student will be allowed to continue in the program, and (d) when a decision is made regarding a recommendation for a teacher's certificate. The latter has become especially important when involving moral conduct. Another important development has been the so-called Buckley Amendment which applies to any institution receiving federal support in any form and which outlines the rights of all college students. (PB)

LEGAL PROBLEMS OF TODAY'S TEACHER EDUCATORS

by

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In no place in our society have the struggles for the rights of individuals been more intense than on our college and university campuses. But this should not be surprising, for in any free society the rights and freedoms of the individual are of paramount concern. The vast majority of all the reported court decisions in the United States relating to higher education deal with individual rights and responsibilities. These decisions all underscore the fact that the idea that the Constitution should follow students to the campus has now been accepted by the courts and the results have been revolutionary.

Since the landmark Dixon[1] case in 1961, there has been a proliferation of court cases which have great effect upon the daily decisions which academic administrators must make. Therefore, today it is absolutely imperative that educators continually be aware of the legal parameters within which they may make decisions.

There was much consternation following Dixon and some of the subsequent decisions that college and university officials were being stripped of any discretion and would not be able to administer their campus. It is now

clear, after looking at all of the court cases affecting students, that the demise of in loco parentis does not mean that college administrators are relieved of all authority and discretion as they attempt to maintain a viable and responsible educational institution. It never did, of course. And now there are few tears over its passing since it is doubtful that a majority of administrators really want to accept some of the responsibilities which attach to that doctrine.

Legal adult status is now accorded to those under 21 in the vast majority of the states and the trend in this direction is continuing. Instead of the majority of students being minors, colleges are now filled with practically all adult students and it is reasonable to say that almost all aspects of higher education may be affected either directly or indirectly by this change.

Since the Dixon case in 1961, students in public colleges possess the right to all due process protection in any disciplinary proceeding which involves long-term suspension or expulsion. This means that in these types of proceedings an accused student must be given adequate notice and an opportunity for a hearing. This also includes those proceedings utilized

in determining whether or not a student is to be terminated from a teacher preparation program.

Campus proceedings involving students have been held to be civil and not criminal proceedings and, therefore, do not necessarily require all of the judicial safeguards and rights accorded to criminal proceedings.[2]

Courts have held that private institutions are not engaged in "state action" and, therefore, are not subject to the due process clause in the 14th Amendment and are not required to follow the dictates of due process in dealing with students.[3] However, I think that it is fair to say that most legal scholars see the distinction that exists between public and private colleges as losing its vitality.

I believe that we have reached a plateau on campus rights insofar as basic constitutional guarantees are concerned. In my opinion, the legal spotlight in the future will be increasingly on academic matters with arbitrary grading practices and decisions such as those regarding students in teacher preparation programs being given particular scrutiny. We can expect the campus confrontations to increasingly include faculty rather than being solely between students and administrators. Also, academic freedom

will indeed be examined with the same scrutiny as has been given past administrative policies and decisions.

In academic affairs, the doctrine of judicial nonintervention has been followed by the courts. They are reluctant to interfere in any administrative proceeding unless there is a clear case of unfairness, arbitrariness, capriciousness, or unreasonableness. However, it seems that students are increasingly resorting to court action when they feel that they have been mistreated in the area of academic affairs.

Faculty members and administrators have the same rights of speech and assembly as do all citizens and certainly we may not be censured or dismissed for the exercise of our constitutional rights. However, I think it is clear that we will increasingly be made accountable for our actions both inside as well as outside the classroom insofar as maintaining the integrity of the educational institution and meeting our responsibilities toward students.

There is abundant evidence to show the increasing concern for academic freedom and academic responsibility; and, I stress the latter for it is now being translated into personal liability for both professors and administrators. The old 1871 Civil Rights Act has recently been rediscovered and

is the basis for personal liability suits which are now being entertained by the Federal courts.

That Act provides that:

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress.[4]

This means being sued for money.

In regard to the management of teacher education, certainly administrators and various faculty committees properly have the authority to make appropriate decisions and in general an administrator or professor who may have participated in the decision may avoid liability under the 1871 Civil Rights Act if he can show that he acted in "good faith" and not arbitrarily or capriciously. However, it is also possible for liability to be assessed against individuals who participate in a decision which deprives a student of due process. It is also possible under this act for an administrator to be held liable for negligent acts, although it appears that courts will not access liability for those acts which are discretionary, isolated or separated from a pattern of negligence, or where there is an absence of danger attached to the act.

In teacher preparation programs, there are basically four critical times for decisions which could possibly result in court action against the administrator or professors involved in those decisions. The first time is at the entry point into the teacher education program when the decision is made whether or not to admit the candidate. The second time is at the point in the student's program when he applies for his student teaching assignment. The third is whether or not the student is allowed to continue in the program. This is particularly true during the internship period when so often a decision must be made regarding continuance. The fourth time is when a decision is made regarding a recommendation for a teacher's certificate.

I would like to stress that although no one can ever escape the possibility of being taken to court, those charged with the management of teacher education programs need not be overly concerned if they act in good faith and when their decisions are reasonable and have a rational basis in law and fact. This is exemplified by several decisions concerning the application and placement of student teachers.

First, in North Carolina, East Carolina University officials were held to have acted within their discretion in denying a student's application for a

student teaching assignment. The student had been arrested for the possession of dangerous drugs but this charge had been later dismissed. He allegedly admitted that he smoked marijuana. University officials declared that his application was denied based upon his total record and suitability for teaching, and not solely upon his connection with drugs. The student was afforded a hearing before the Teacher Education Committee and the procedures followed were upheld by the court as being reasonable and fair.[5]

In another case, a student at Bluefield State College in West Virginia who had been active in violent campus disruptions sought to recover damages for his not being able to do his student practice teaching at any of the public schools with which the college had a student teaching agreement. All of those schools refused to accept the student. The college finally was able to place him at the Charleston Job Corps Center which he refused to accept. The Court held that the college officials had acted in good faith and fulfilled their obligation in trying to place the student. It further ruled that the county school systems which had refused to accept the student had not infringed upon his rights and that their decisions were within the bounds of their discretion and had a rational basis in law and fact. The Court

also held that a West Virginia statute did not impose upon a college or university any absolute duty to place any student in any particular county school system and did not require any county school board to accept for practice teaching any particular student or any specified number of students.[6]

A much publicized $1,000,000 suit was filed in Federal court against seven College of Emporia professors (a private institution) and a high school principal in Emporia, Kansas. There the college refused to graduate a student with a minor in education who had been dismissed from his student teaching by the high school principal. He claimed that the defendants deprived him of equal protection of law and due process by discharging him before his student teaching experience was concluded. He was accused of buying alcoholic beverages for students, inviting a female student to his room and telling obscene and off-color stories to his class. The principal based his action upon allegations that the conduct of the student "was both morally and professionally unbecoming one entrusted with the educational welfare of students in a public school." In its decision, the Court declared that if such accusations were true, then the claims of the student would fail. The Court held that neither the college nor the individual professors were

liable for damages since the private college was not engaged in state action to the extent necessary under the Civil Rights Act. As to the actions of the high school principal, the Court ruled that the student had no contractual relationship with the high school justifying a student teaching tenure or due process of any kind and that the principal owed no legal duty whatsoever to the student upon which liability might be imposed. Although the Court refused to impose liability under the Civil Rights Act, it pointed out that as to all defendants, there appeared to be allegations in the student's complaint, which, based on diversity of citizenship and jurisdictional amount, may be relied upon by the student as a cause of action for the tort of libel and slander.[7]

In the past, it has generally been thought that since student teachers were not paid employees their relationship with the school in which the internship was being performed could be terminated for any reason. However, a recent Federal Court decision in North Carolina declared that "the fact that he was not being paid is neither material nor controlling." In this decision, the Court held that the discharge of a student teacher for having responded to students' questions regarding religion by approving

Darwinian theory and questioning a literal interpretation of the Bible was unconstitutional. The Court stated that "to discharge a teacher without warning because his answers to scientific and technological questions do not fit the notions of the local parents and teachers is a violation of the Establishment Clause of the First Amendment."[8]

One special area of concern is the recommendation for a teacher's certificate, and more specifically the withholding of such a recommendation solely on the basis of known homosexuality or alleged immoral conduct. There are a number of cases dealing with the revocation of teachers' certificates, refusal to hire known homosexuals, and dismissals because of alleged immoral conduct. In general, it appears that the mere fact that an individual is a homosexual does not justify the withholding of a recommendation for a teacher's certificate. The test which must be applied is whether or not the conduct of the applicant has an adverse effect on his "fitness to teach." A citizen has the right to live his own private life and cannot be penalized for such unless his behavior is unlawful or constitutes an impairment on his ability and fitness to teach. In a California case involving the revocation of the certificate of a homosexual,

the Court declared that the revocation of a teacher's certificate would be upheld if the evidence disclosed that the teacher's retention "poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher."[9]

The question of what constitutes immoral conduct to the extent that an individual should not be allowed to teach is one whose answer is most elusive. In a case of this type, the California Supreme Court upheld the revocation of the certificate of an elementary teacher who performed oral copulation acts witnessed by others at a "swingers" party. The Court declared that the party was in sort of a semi-public atmosphere and that her actions constituted a flagrant display which indicated a serious defect in moral character. Since it is expected that teachers set an example for their students, it was felt that because she openly engaged in the sexual acts witnessed by others, she might try to inject her views of sexual morality into the classroom.[10]

One of the most recent legal developments which may have many implications for those responsible for teacher education and which has been so widely discussed in higher education the past few months[11] is the passage by

Congress of the so-called "Buckley Amendment." This act, with recent enacted modifications, outlines the rights of all college students of any age, whether they are enrolled in either public or private institutions. If the institution accepts any type of federal funds then the law is applicable and I believe that there are only two colleges in this country that refuse federal support in any form. The law requires that the college notify its students of their rights under this act. Under this law students and former students have the right to inspect their records and must be given a hearing to challenge any alleged inaccuracy of those records. The legislation was not designed to allow a rejected applicant to challenge the recommendations on which the institution based its decision. Also, it was not designed to allow parents or students to contest grades.

Records to be opened to students are defined as "those records, files, documents, and other materials directly related to a student which are maintained by a school or by one of its agents." Students may not, however, have access to confidential letters and recommendations placed in their files before January 1, 1975, provided, however, that such communications are not used for purposes other than those for which they were specifically intended.

Although colleges may not ask for a general waiver, it is possible for students to waive their rights of access to future confidential recommendations in the areas of admissions, job placement, and receipt of awards, under certain limitations such as requiring that a student be notified of the names of all persons making recommendations.

Students do not have access to their parents' confidential financial statements. Neither may they have direct access to medical, psychiatric, "or similar records which are used solely in connection with treatment purposes and only available to recognized professionals or para-professionals in connection with such treatment." Students may, however, have a doctor or other qualified professional of their choice to inspect their records. Also, students do not have access to records kept by a college's law enforcement officers "if the personnel of a law enforcement unit do not have access to education records."

Although the law applies to college students of any age, parents of dependent students do have a right to information about their children, such as grades, without having to gain the student's consent.

Written consent of the student must be obtained in order for any person or agency to have access to student records. Without the written consent of

the student, only designated persons or agencies with an appropriate "need to know" may have access to student records.

The law allows organizations such as the Educational Testing Service access to information "for the purpose of developing, validating, and administering predictive tests." These types of organizations also may have access to enough information to conduct follow-up studies to determine if their tests really do predict performance.

The Amendment is not intended to prohibit the release of student names and addresses as part of a school directory, although the institution would have to give public notice of the kinds of information it planned to make available.

Personal information shall only be transferred to a third party on the condiction that such party will not permit any other party to have access to such information without the consent of the student.

In the case of a subpoena or court order, the college student must be notified by the institution in advance of its compliance with such subpoena or court order.

Although the full implications of this law for those concerned with

teacher education may not be fully realized at the present time, an awareness of the provisions of that law and a sensitivity to the rights of privacy of students are essential.

If we knew all of the answers we could simply feed the questions that we face in education into the computer and immediately receive the answers on the printout. But the answers are not that easily attained and that is why individuals must accept the responsibility of using their best judgment in making decisions--decisions which almost always are not agreed upon by everyone. But even the United States Supreme Court justices will strenuously disagree among themselves.

With admitted bias, I believe there is no more noble responsibility in our society than that of preparing teachers--teachers who not only understand children and how they learn, but who have an understanding and appreciation of those ingredients necessary for a free and open society.

Individual freedom is indeed the cornerstone of a free society and eternal vigilance is necessary in order to ensure its survival. That survival is enhanced only if higher education flourishes as a responsible free marketplace of ideas in which the rights and responsibilities of all

are recognized and accepted. The recognition and acceptance of both rights and responsibilities by administrators, faculty, and students is a prerequisite not only to public confidence and trust in higher education but to building a better society in which each individual can progress to the fullest extent of his capacity and potential with maximum freedom.

FOOTNOTES

1. Dixon v. Alabama State Board of Education, 294 F. 2d 150 (1961).

2. Ibid. (Courts are unanimous on this point and the cases are too numerous to recount. Dixon is, however, the leading case on this point.

3. Grossner v. Trustees of Columbia University in City of New York, 287 F. Supp. 535 (1968); Torres v. Puerto Rico Junior College, 298 F. Supp. 458 (1969); Powes v. Miles, 407 F. 2d 73 (1968); and Brown v. Mitchell, 409 F. 2d 593 (1969).

4. 42 U.S.C.A. 1983.

5. Lai v. Board of Trustees of East Carolina University, 330 F. Supp. 904 (1971).

6. James v. West Virginia Board of Regents, 322 F. Supp. 217 (1971).

7. Rowe v. Chandler, 332 F. Supp. 336 (1971).

8. Moore v. Gaston County Board of Education, 357 F. Supp. 1037 (1973).

9. Morrison v. State Board of Education, 1 Cal. 3rd 214 (1969).

10. Pettit v. State Board of Education, 109 Cal. Rptr. 665 (1973).

11. Much of this summary is taken from the December 23, 1974 issue of The Chronicle of Higher Education.